

CIVIL REFERENCE.

Before Mr. Justice Pigot and Mr. Justice Beverley.

SHUTTRUGHON DAS COOMAR (PLAINTIFF) v. HOKNA SHOWTAL
AND OTHERS (DEFENDANTS.)^a

1889
January 7.

*Right of Suit—Suit for compensation for wrongful seizure of Cattle—Cattle
Trespass Act (I of 1871.)*

A suit for compensation for wrongful seizure of cattle will lie in a Civil Court, the provisions of Act I of 1871 being no bar to such a suit.

Nomaz Mollah v. Lall Mohun Tagadger (1) approved of; *Aslem v. Kalla Durzi* (2), dissented from.

REFERENCE under s. 617 of the Code of Civil Procedure from the Second Munsiff of Midnapore.

The plaintiff brought this suit to recover from the defendants the sum of Rs. 24, being the amount of fine paid by him in releasing his cattle, which he alleged had been wrongfully seized and impounded by the defendants. The defendants contended that the provisions of Act I of 1871 were a bar to a suit for compensation for illegal seizure of cattle, and further that the seizure and detention of the plaintiff's cattle were not illegal and wrongful.

The Munsiff found that the seizure was illegal and wrongful and decreed the suit; but having regard to the conflicting rulings in *Nomaz Mollah v. Lall Mohun Tagadger* (1) and *Aslem v. Kalla Durzi* (2), he made his judgment contingent on the opinion of the High Court, on the question whether the provisions of Act I of 1871 operated as a bar to the maintenance of a suit for compensation for wrongful seizure of cattle in a Civil Court.

No one appeared for the plaintiff.

Baboo Karuna Sindhu Mookerjee for the defendants.

The judgment of the Court (PIGOT and BEVERLEY, JJ.) was as follows:—

In this case there are two conflicting decisions, and the Small Cause Court Judge has very properly referred the case to us. The question is whether an action for wrongful seizure of cattle will lie

* Civil Reference No. 22A of 1888, made by Baboo Bhubun Mohun Gangooly, Second Munsiff of Midnapore, dated the 7th of September 1888.

(1) 15 W. R., 279.

(2) 2 C. L. R., 344.

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in a Civil Court. Mr. Justice Mitter and Mr. Justice Maclean, in the case of *Aslem v. Kalla Durzi* (1), have held that it would not, the remedy by Act I of 1871 being, in the opinion of both those learned Judges, the only remedy available. On the other hand, in the case of *Nomaz Mollah v. Lall Mohun Tagadgeer* (2), it was held by Mr. Justice Loch and Mr. Justice Ainslie that a suit would lie, notwithstanding the provisions of Act III of 1857, the similar Act then in force. That case does not seem to have been before the learned Judges who decided the case of *Aslem v. Kalla Durzi* (1) which was not argued. Under these circumstances, we must form our opinion by the light of those two cases, and upon such grounds as appear to us to exist upon a consideration of the statute. The peculiar remedy for the wrongful seizure of cattle, and the special limitation provided for it, are the same as existed under Act III of 1857, referred to in the case of *Nomaz Mollah v. Lall Mohun Tagadgeer* (2). Such a remedy does not, we think, exclude the ordinary remedy which a man possesses under the law. It might be, as Mr. Justice Loch points out, a hard thing that a man, who has not been able to pursue his remedy under the summary Act within ten days, should, because that Act offered him that remedy, be barred from exercising a right which existed for him before. Therefore, agreeing with the decision in the case of *Nomaz Mollah v. Lall Mohun Tagadgeer* (2) we consider that this suit will well lie.

C. D. P.

(1) 2 C. L. R., 344.

(2) 15 W. R., 279.